

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON

August 28, 2001 Session

**S. BOWMAN REID v. EXPRESS LOGISTICS, INC.**

**Direct Appeal from the Circuit Court for Shelby County  
No. 300782 T.D. D'Army Bailey, Judge**

---

**No. W2001-00236-COA-R3-CV - Filed November 26, 2001**

---

This appeal involves a dispute over post-employment commissions. The defendant orally agreed to pay the plaintiff a commission of 25% on revenues the defendant received due to the plaintiff's work. When the plaintiff resigned from the defendant's company, the defendant refused to continue to pay the plaintiff those commissions. The trial court determined that the parties were without an oral or written contract regarding post-employment commissions and granted the defendant's motion for summary judgment. The plaintiff appeals on the grounds that Tennessee law requires commissions to continue post-employment, that the parties had a written contract regarding post-employment commissions, and that the parties had an oral contract regarding post-employment commissions. For the reasons below, we affirm in part, reverse in part, and remand the case to the trial court for further proceedings in accordance with this opinion.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in part;  
Reversed in part; and Remanded**

DAVID R. FARMER, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and HOLLY K. LILLARD, J., joined.

Stuart B. Breakstone, Memphis, Tennessee, for the appellant, S. Bowman Reid.

T. Tarry Beasley, II, Memphis, Tennessee, for the appellee, Express Logistics, Inc.

**OPINION**

Mason Kauffman (Mr. Kauffman), the president of Express Logistics, Inc., hired S. Bowman Reid (Mr. Reid) as the corporation's Director of Sales in April 1995. Express Logistics, Inc. audits companies and their shipping carriers and advises them of ways to perform their shipping functions more economically. Mr. Reid's duties included contacting businesses and marketing the auditing services of Express Logistics. As compensation for these services, Express Logistics, through Mr. Kauffman, agreed to pay Mr. Reid 25% of the revenues Mr. Reid generated as a draw against commission.

On February 23, 1996, Mr. Kauffman presented Mr. Reid with a document entitled "Express Logistics Sales Overview." The document defined guidelines at Express Logistics regarding sales person procedures, productivity, expectations, and compensation. The document also contained a provision entitled "Extended Compensation." This provision stated that "[a] unique feature of the Express Logistics sales compensation package is that audit commissions can continue for up to two years providing the clients they sold are still Express Logistics clients and the sales person left in good standing."

On April 21, 1996, Mr. Reid tendered his resignation to Mr. Kauffman. The letter stated as follows:

Due to our inability to come to an agreement of commission payouts, I hereby leave my resignation to Express Logistics, Inc. Having made the comparison of notation from the date of hire to the present date, my position of Director of Sales, the inventory needed and the commission payout have all been out of line. Additionally, there has been a clear concern regarding the ability to audit United Parcel Service and the need for a business telephone line for customers. After careful consideration and repeated discussion over the above issues, I leave Express Logistics in good standing as Sales Representative.

Mr. Reid filed a complaint for breach of an employment contract on February 12, 1999. In his complaint, Mr. Reid sought to recover post-employment commissions from Express Logistics. Mr. Reid asserted that Mr. Kauffman promised to pay him continued commission on the sales he made while an employee of Express Logistics. Mr. Reid claimed these commissions were to continue for up to three years after he left Express Logistics, provided he left as an employee in good standing.

Express Logistics filed a timely answer to the complaint. In its answer, Express Logistics denied any agreement regarding compensation after Mr. Reid left the company. On September 26, Express Logistics filed a motion for summary judgment. In its motion, Express Logistics asserted Mr. Reid was without an oral or written contract on which to base his claim. The trial court entered an order granting Express Logistics' motion on January 19, 2001. In its order, the court stated as follows:

1. That, as a matter of law, there was no written contract between the parties, as the Sales Overview was not an agreement or contract as it was too indefinite and its use of the words "can" and "up to" allows for various interpretations, it did not contain defined quantities, and it was not signed by the parties.
2. That, as a matter of law, there was no oral contract between the parties as shown by the Plaintiff's own letter of resignation which stated in part that there was no agreement between the parties and that was the reason he was terminating his services to the company.

3. That the record and the documentary proof including Plaintiff's resignation letter rebuts and puts issue of "good standing" beyond a triable fact.
4. That all proof offered by the Plaintiff taken in the most favorable light is insufficient to present to a jury or this Court.
5. That the Defendant's Motion for Summary Judgment is well taken.

Mr. Reid appealed the trial court's decision. The issues raised by Mr. Reid are as follows:

- I. [Whether] the trial court erred in granting the Defendant's motion for summary judgment where a valid written employment contract existed between the parties, requiring the Defendant to pay plaintiff commissions on revenues received by Defendant after he concluded his employment.
- II. [Whether] the trial court erred in granting Defendant's motion for summary judgment because there is a material question of fact as to whether the Defendant is obligated under an oral agreement to compensate Plaintiff for commission earned during his employment.
- III. [Whether] the trial court erred in granting Defendant's motion for summary judgment where under Tennessee law, Plaintiff is entitled to commission earned from any sale made prior to his resignation if funds were received from those sales after his resignation.

Summary judgment is appropriate only when the moving party demonstrates that there are no genuine issues of material fact and that they are entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.04; *Seavers v. Methodist Med. Ctr. of Oak Ridge*, 9 S.W.3d 86, 90-91 (Tenn. 1999); *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993). We review summary judgments as a question of law; accordingly, we review the record in this case *de novo* without any presumption that the trial court's conclusions were correct. *Griffin v. Shelter Mut. Ins. Co.*, 18 S.W.3d 195, 197-98 (Tenn. 2000); *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997). We must examine the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Seavers*, 9 S.W.3d at 90-91; *Byrd*, 847 S.W.2d at 210-11. "If both the facts and conclusions to be drawn therefrom permit a reasonable person to reach only one conclusion, then summary judgment is appropriate." *Seavers*, 9 S.W.3d at 91.

We will begin with Mr. Reid's third issue, which the trial court did not address on summary judgment. Mr. Reid contends that under Tennessee law, Express Logistics must continue to pay him commission on sales he made prior to his resignation. We agree with this assessment of Tennessee law. Absent agreement to the contrary, Express Logistics must continue to pay Mr. Reid post-employment commissions on sales Mr. Reid made while employed by Express Logistics.

This issue is controlled by this Court's decision in *Winkler v. Fleetline Products, Inc.*, 859 S.W.2d 340 (Tenn. Ct. App. 1993). In *Winkler*, the plaintiff agreed to procure customers for the defendant's painting business. *Id.* at 341. As compensation for these services, the defendant orally agreed to pay the plaintiff a 10% commission on the painting work performed for these customers. *Id.* The plaintiff was to receive the commission after the customers paid the defendant. *Id.* The plaintiff secured five customers during his employment and received the commission after the customers paid their bill. *Id.* After working for the defendant for over a year, the defendant terminated the plaintiff's employment. *Id.* When the plaintiff sued the defendant, customers the plaintiff procured had paid the defendant more than \$160,000. *Id.* 341-42. This Court determined that commissions from sales made as a result of the plaintiff's services were rightfully due to the plaintiff. *Id.* at 342. In reaching our conclusion, we relied on the terms of the oral agreement which mandated that the plaintiff was to receive a 10% commission after the customers paid the defendant. *Id.* As the parties were "free to contract as they saw fit regarding residual commissions," we held in favor of the plaintiff and ordered the defendant to pay the post-employment commissions. *Id.* at 342-43.

We expanded the rationale underlying *Winkler* in *Westfall v. Brentwood Service Group, Inc.*, No. E2000-01086-COA-R3-CV, 2000 WL 1721659 (Tenn. Ct. App. Nov. 17, 2000) *no perm. app. filed*. We decided that *Winkler* applies regardless of whether the employee resigned or was fired. *Id.* at \*4. Again, we relied on the contract between the parties noting that "nowhere in the parties' agreement is there any indication that resignation invalidates the defendant's obligation to pay commissions, an obligation which, as we have previously pointed out, is stated in unconditional terms in the writing before us." *Id.* Finally, we stated that the plaintiff's duty in the case was to "sign-up" customers; therefore, the plaintiff earned his commission when the customer entered the contract with the defendant-employer.

Here, the parties agree that Mr. Reid and Express Logistics entered an oral contract where Express Logistics would pay Mr. Reid a 25% commission on revenues he brought in while an Express Logistics employee.<sup>1</sup> As *Winkler* and *Westfall* mandate, Express Logistics must continue to pay Mr. Reid these commissions. Mr. Reid earned those commissions while an Express Logistics employee and remains entitled to them. Mr. Reid has a right to the commissions pursuant to the oral contract between the parties which promised Mr. Reid a 25% commission on revenue derived from his sales.

*Winkler* and *Westfall* also provide, however, that Express Logistics' obligation to pay Mr. Reid post-employment commissions may be limited by contract between the parties. The trial court ruled that the parties were without a written or oral contract regarding post-employment commissions. For the reasons that follow, we affirm the trial court's decision on the written contract issue and reverse the trial court's decision on the oral contract issue.

---

<sup>1</sup>In Mr. Kauffman's February 28, 2000 deposition, he admitted that Mr. Reid would come to work for Express Logistics as the director of sales and be paid 25% of revenues, as well as a draw against commissions.

The trial court granted summary judgment to Express Logistics on Mr. Reid's written contract claim, deciding the document failed to meet the requirements of a valid contract as it was "too indefinite." We agree that summary judgment was proper on this issue but affirm the trial court's decision for a different reason.

This Court has previously recognized that employment guidelines and handbooks can form the necessary elements of an employment contract, or a part of an employment contract. *See, e.g., King v. TFE, Inc.*, 15 S.W.3d 457, 460-62 (Tenn. Ct. App. 1999); *Reed v. Alamo Rent-A-Car, Inc.*, 4 S.W.3d 677, 686-87 (Tenn. Ct. App. 1999); *Robins v. Flagship Airlines, Inc.*, 956 S.W.2d 4, 5-6 (Tenn. Ct. App. 1997); *Rose v. Tipton County Pub. Works*, 953 S.W.2d 690, 691-95 (Tenn. Ct. App. 1997); *Williams v. Maremont Corp.*, 776 S.W.2d 78, 80-81 (Tenn. Ct. App. 1988). In *Rose*, we stated that

[i]n order to constitute a contract, . . . the handbook must contain specific language showing the employer's intent to be bound by the handbook's provisions. Unless an employee handbook contains such guarantees or binding commitments, the handbook will not constitute an employment contract. As stated by one court, in order for an employee handbook to be considered part of an employment contract, "the language used must be phrased in binding terms, interpreted in the context of the entire handbook, and read in conjunction with any other relevant material, such as an employment application."

*Rose*, 953 S.W.2d at 692 (citations omitted)(quoting *Claiborne v. Frito-Lay, Inc.*, 718 F.Supp. 1919, 1321 (E.D. Tenn. 1989)).

This Court has also recognized that an employer can preclude a handbook or set of guidelines from being considered an employment contract by reserving a "unilateral right" to change or modify the document. *Rose*, 953 S.W.2d at 693-94 (citing *Claiborne v. Frito-Lay, Inc.*, 718 F.Supp. 1919, 1321 (E.D. Tenn. 1989)). This general rule is inapplicable, however, to cases where the employer also included unequivocal language demonstrating its intent to be bound by the provisions in the guidelines or handbook. *Reed v. Alamo Rent-A-Car, Inc.*, 4 S.W.3d 677, 688 (Tenn. Ct. App. 1999).

In the present case, the document purported to be a contract fails to include specific language indicating Express Logistics' intent to be bound by the document's provisions. The document is without specific promises or agreements that would suggest an employment contract. The document, as its title suggests, is merely a "Sales Overview" that fails to rise to the level of a contract. Additionally, the document does not contain binding commitments or guarantees in the provision entitled "Extended Compensation." The provision stating that commissions "can continue for up to two years" fails to indicate the type of binding commitment or guarantee that would constitute an employment contract.

More importantly, the document contains a provision stating that “[t]hese are general guidelines and subject to change.” This statement illustrates that Express Logistics reserved a “unilateral right” to change or modify the “Sales Overview.” This reservation, coupled with the fact that Express Logistics did not include language suggesting its intent to be bound in the document, precludes the document from being considered an employment contract. Therefore, we affirm the trial court’s grant of summary judgment on the written contract issue and conclude the “Sales Overview” did not limit Mr. Reid’s receipt of post-employment commissions.

The trial court granted Express Logistics’ motion for summary judgment on the oral contract issue stating that the Mr. Reid’s letter of resignation proved the parties failed to enter an oral agreement regarding commissions. Mr. Reid’s letter does indeed state that he is resigning due to the “inability to come to an agreement of commission payouts.” However, in reviewing the evidence, we are unable to agree with the trial court’s grant of summary judgment on the oral contract issue.

Courts will uphold an oral contract for employment if the parties can perform the contract within one year. Tenn. Code Ann. § 29-2-101 (2000); *Castelli v. Lien*, 910 S.W.2d 420, 426 (Tenn. Ct. App. 1995); *Price v. Mercury Supply Co.*, 682 S.W.2d 924, 932 (Tenn. Ct. App. 1984). The party seeking to enforce the oral contract must prove the parties entered the contract with mutual assent and must demonstrate the contract’s terms are sufficiently definite to be enforceable. *Castelli*, 910 S.W.2d at 426-27. A contract is sufficiently definite if the terms provide “a basis for determining the existence of a breach and for giving an appropriate remedy.” *Jamestowne on Signal v. First Fed. S. & L.*, 807 S.W.2d 559, 564 (Tenn. Ct. App. 1990) (quoting *Restatement (Second) of Contracts* § 33).

Here, Mr. Reid asserts that he and Mr. Kauffman had an oral agreement regarding Mr. Reid’s compensation. The parties agree there was an oral agreement to pay Mr. Reid a commission of 25% during his time as an employee of Express Logistics. Mr. Reid, however, alleges that there was an additional oral agreement which provided that the commissions were to continue after he left Express Logistics, provided he left as an employee in good standing. Express Logistics denies there was an agreement for continued commissions, and contends that even if there was such an agreement, the agreement was too indefinite to be a valid contract.

Mr. Reid’s attorney asked Mr. Kauffman about the oral agreement in a deposition. The relevant portions of the deposition were as follows:

- Q. Did you ever tell Mr. Reid that one benefit that your company offers is a payout after he left if he left on good terms?
- A. Yes, we had discussed things to that effect.
- Q. Okay.
- A. That’s correct.

Q. And what was the percentage that you discussed with Mr. Reid, 25 percent, wasn't it, at that time?

A. I forgot on an extended basis or whatever, but that's probably correct.

Q. Okay. And for what period of time did you and Mr. Reid discuss? Three years sound about right?

A. I don't know if it was three years, up to three years.

....

A. We had discussions on a frequent basis.

Q. Okay. Before he came to work there, though, you had one such discussion; isn't that correct?

A. That is correct, sir.

Q. And during that discussion, you told Bowman that, "Come get in on the ground level of a company that's going places?"

....

A. Yes, sir.

....

Q. Okay. And you said, "I'm going to give you a draw against your commissions. I'm going to pay you 25 percent commission;" is that correct?

A. That's probably in essence what we were talking about.

Q. "I don't have health insurance right now, but I'm going to work on that?"

A. Yes, sir.

Q. Okay. "Because of – I don't have retirement or anything like that, but I'm going to continue to give you 25 percent of what you do for three years after you leave if you leave in good terms – in good standing," something like that?

A. Yes, sir.

Q. Okay. And Bowman came to work for you; correct?

A. Yes, sir.

In light of this testimony, we disagree with the trial court's decision to grant summary judgment on the oral contract issue. Though Mr. Kauffman now denies offering Mr. Reid continued commission from sales Mr. Reid made as an employee of Express Logistics, Mr. Kauffman's testimony in his deposition raises a genuine issue of material fact which precludes summary judgment. Additionally, if the trier of fact believes Mr. Kauffman's deposition testimony, the oral contract will not fail for lack of certainty. The testimony clearly indicates an amount, 25%, and a time frame, three years. As *Jamestowne* requires, these terms provide a basis for establishing a breach and they allow a court to provide an appropriate remedy.

We also cannot agree with the trial courts determination that the issue of good standing is beyond a trier of fact. In Mr. Kauffman's deposition, Mr. Kauffman testified that he told Mr. Reid several times that Mr. Reid's work was unsatisfactory. Mr. Kauffman also testified that he planned to fire Mr. Reid the day Mr. Reid resigned from Express Logistics. Despite this testimony, there remain issues of material fact regarding Mr. Reid's status when he left Express Logistics. The record contains documents suggesting that Mr. Reid was a valuable employee to Express Logistics. Mr. Kauffman gave Mr. Reid a card calling Mr. Reid the "Best Salesman in the World." Additionally, Mr. Kauffman sent a complementary letter to Mr. Reid five months before Mr. Reid resigned. The letter stated that Mr. Reid was in "great shape" as an Express Logistics employee and stated that Mr. Reid had the potential to have an "outstanding year." Therefore, summary judgment was not appropriate to determine if Mr. Reid left Express Logistics as an employee in "good standing."

On remand, the trial court must determine whether the parties had an oral contract regarding Mr. Reid's post-employment commissions. If the parties were without an oral contract regarding post-employment commissions, Mr. Reid shall receive those commissions pursuant to this Court's decisions in *Winkler* and *Westfall*. If, after hearing testimony and viewing evidence, the trial court concludes there was an oral contract between Express Logistics and Mr. Reid as to post-employment commissions, the trial court must determine the terms of the contract and decide how the terms of the contract affect the post-employment commissions. If the post-employment commissions were dependent on Mr. Reid leaving Express Logistics as an employee in "good standing," the trial court must determine whether Mr. Reid left Express Logistics pursuant to those terms, as that issue was improper for summary judgment.



Accordingly, we affirm in part, reverse in part, and remand this case to the trial court for further proceedings consistent with this opinion. The costs of this appeal are taxed one-half to the appellant, S. Bowman Reid, and his surety, and one-half to the appellee, Express Logistics, Inc., for which execution may issue if necessary.

---

DAVID R. FARMER, JUDGE